



Control Number: 51830



Item Number: 9

Addendum StartPage: 0

**PUC PROJECT NO. 51830**

**REVIEW OF CERTAIN RETAIL  
ELECTRIC CUSTOMER  
PROTECTION RULES**

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**BEFORE THE  
PUBLIC UTILITY COMMISSION  
OF TEXAS**

**TEAM'S RESPONSE TO REQUEST FOR COMMENTS ON STRAWMAN RULE**

Pursuant to Public Utility Commission of Texas ("Commission") Staff's Request for Comments, attached are comments filed on behalf of Texas Energy Association for Marketers ("TEAM") to the Commission Staff's request for comments regarding its strawman rule implementing House Bill 16 and portions of Senate Bill 3 (the "Strawman"). TEAM appreciates the effort of Staff to draft proposed rules to implement that legislation. TEAM looks forward to working with the Commission and other interested stakeholders in reaching final rule language.

**I. OVERVIEW AND EXECUTIVE SUMMARY**

Structurally, beginning on the following page, TEAM first presents a bullet-point executive summary in this Section I of these comments. TEAM will then address the comments to the proposed amendments to the rules in 16 TAC §25.471, 16 TAC §25.475, and 25.479 first, in Section II.<sup>1</sup> TEAM's comments responding to Staff's questions concerning removal of the Real-Time Settlement Point Price ("RTSPP") from the Provider of Last Resort ("POLR") rate formula are addressed in Section III of these comments. TEAM has made an effort in these comments to address the most fundamental issues raised by the proposed rules and questions. In general, TEAM prioritizes the maintenance of the customer experience in the market.

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<sup>1</sup> All references are to sections of 16 Texas Administrative Code (TAC), as proposed to be modified by the Strawman for continued reference in the rule, the proposed rule number and section will be used for ease of reference.

## **Executive Summary**

### **COMMENTS ON RULE AMENDMENTS:**

- Place new provisions related to large commercial customers in a new, separate rule (proposed in these comments as a new section 25.499). Maintain existing scope of section 25.475, which has always been expressly limited to residential and small commercial customers only.
- Revise Strawman section 25.475 to make clear that the new expiration-notice provisions only apply to new enrollments or re-enrollments, as set forth in House Bill 16.
- Eliminate the Strawman's proposed additions of ancillary service charges to definitions of fixed rate product and price in Strawman sections 25.475(b)(5) and (b)(8). Maintain existing definitions of those terms.
- Eliminate the Strawman's proposed additions of references to the Acknowledgment of Risk ("AOR") document in section 25.475. Eliminate entirely those references to AORs that would be applicable to residential and small commercial customers or applicable to products other than wholesale indexed products, as such are outside the scope and intent of House Bill 16. Move references to AORs that comport with House Bill 16 and pertain only to wholesale indexed products, which are limited to large commercial customers, in a new, separate rule (proposed in these comments as a new section 25.499).
- Revise Strawman section 25.475(e) to better comport with House Bill 16 and make clear that the new fixed rate product expiration-notice requirements do not apply to small commercial customers. Texas Utilities Code Section 39.112, as amended by recently-enacted House Bill 16, only addresses residential customers.
- Revise Strawman section 25.475(e)(2)(D) where it uses an "and" but House Bill 16 uses an "or," so that it better comports with the text of House Bill 16.
- Eliminate Strawman section 25.475(e)(2)(C) relating to permissive communications, as it is not necessary and risks confusion.
- Make clarifying revisions to Strawman section 25.755(e)(1), which refers to term contracts.
- Eliminate additions in Strawman section 25.475(h)(3) that propose to require REPs to provide information related to TDU load-shedding procedures in the YRAC document, as that type of information is not appropriate for inclusion in the YRAC, does not relate to any REP obligation, and could create customer confusion, and lead customers to falsely believe that REPs are in control of, for example, how often a customer will experience a rotating outage during involuntary load shedding.
- Concerning the even distribution of expiration notices required by House Bill 16, revise the Strawman to allow the REP flexibility to implement those notices on a timeframe that accomplishes an even distribution by number of days from contract expiration, rather than

just referring to divisions of a contract's period. Stated another way, the REP should be permitted to determine the timing of when the three notices of contract expiration should start, provided all such notices are sent within the last third of the contract period and at reasonably even distribution, with the last notice being sent within the 30- or 15-day prior to contract end date, depending on the contract's term, required by HB 16. While the statute does say that the notices should be evenly dispersed in the last third of the contract, it also says, where practicable.

- Also concerning the new expiration-notice provisions, revise the Strawman as to one of the notice categories, to make clear which categories customers with 4-month-long contracts fall into, as this does not appear to be currently addressed.
- Ensure electronic communication is allowed for the newly proposed notice as set forth in Strawman sections 25.479(d)(1)(A)-(D) (subject to the customers' preference), so that customers may be most effectively and timely reached.
- Of minor note, there are several instances in the Strawman where the term "customer" is used, although the term that is likely more appropriate is "applicant." Replacements and clean-up changes relating to these terms can be made at a later stage in the process of developing these proposed rule amendments.

#### COMMENTS ON POLR QUESTIONS:

- If the Commission removes the RTSPP from the POLR rate formulas, replace the RTSPP variable with a variable that is tied to a multiplier of an average objective rate that does not have the volatility of a RTSPP. At this time, TEAM is not proposing concrete language for the substituted variable, but suggests ideas in these comments as a starting point for discussions.
- The current POLR formula that includes the RTSPP variable could be maintained for large commercial customers.
- TEAM strongly urges that if the RTSPP is removed from the POLR rate formulas, there must be some back-stop and/or recovery mechanism, where REPs who get POLR drops have limited exposure and/or can recover through uplift or pass through the difference between what they had to pay to serve these unexpected customers, which are likely dropping when RTSPP is high, and what the POLR rate allows. REPs who happen to get POLR drops should not unequally bear costs of the whole market. This is especially true when it comes to POLR drops, which are unpredicable and difficult, or even, impossible to hedge.

## II. COMMENTS ON RULE AMENDMENTS

### A. Changes to Strawman regarding large commercial customers.

The Strawman proposes incorporating changes concerning large commercial customers into section 25.475, which pertains to residential and small commercial customers. TEAM proposes that any changes relating to large commercial customers should be placed in a separate rule, and that section 25.475 remain focused only on residential and small commercial customers. Section 25.475 has always been expressly limited to residential and small commercial customers – not related to large commercial customers. Rules relating to large commercial customers should be presented together in a clear, separate rule, rather than intertwining concepts that apply only to large commercial customers on a piecemeal basis in portions of section 25.475. Thus, TEAM proposes changes to Strawman section 25.475(a) and the title of 25.475, and other sections of the Strawman, to eliminate references to large commercial customers and maintain the section's applicability to residential and small commercial customers only, as set forth throughout the following sections of these comments.

Additionally, in section F of these comments, TEAM proposes language for a new, separate rule section, 25.499, to house the changes relating to large commercial customers.

### B. Changes to Strawman 25.475(a) and title – related to applicability/effective date of expiration notices.

Section 3 of House Bill 16 made clear that its changes to Texas Utilities Code Section 39.112 related to expiration notices only apply to new enrollments or re-enrollments, not existing customers. Specifically, Section 3 of House Bill 16 provides:

The changes in law made by this Act apply only to an enrollment or re-enrollment of a customer in a retail electric product that is executed on or after the effective date of this Act. An enrollment or re-enrollment of a customer in a retail electric product that is executed before the effective date of this Act is governed by the law

as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

That House Bill 16 did not intend to affect expiration notices for existing customer contracts makes operational sense. Without adherence to Section 3, retail electric providers (“REPs”) would be put in the position of sending expiration notices beginning on September 1 and it would be impossible to comply with the requirement that three expiration notices be issued at the end of the contract. To require REPs to try to craft an expiration notice system to catch all existing customers no matter where they are at in the contracts would be onerous, and for some customers who are already near to expiration, impossible. The Strawman proposes that the expiration notice requirement would begin on September 1, but it does not make the express distinction required by House Bill 16 that the new expiration notices requirement will only apply to new enrollments or re-enrollments. Thus, TEAM proposes that the Strawman be revised to more expressly match the text and intent of House Bill 16, as set forth below.

**TEAM’s proposed changes to Strawman 25.475(a) and title:**

**§25.475. General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial ~~Residential and Small Commercial~~ Customers.**

- (a) **Applicability.** The requirements of this section apply to retail electric providers (REPs) ~~and aggregators, when specifically stated,~~ in connection with the provision of service and marketing to residential and small commercial customers. ~~This section is effective April 1, 2010. When specifically stated, the requirements of this section apply to brokers and aggregators. When specifically stated, the requirements of this section apply to the provision of service and marketing to large commercial and industrial customers. This section is effective for contracts entered into on or after September 1, 2021.~~ REPs are not required to modify contract

documents related to contracts entered into before this date, ~~but shall must and are~~  
only required to provide notice of expiration as required by subsection (e) of this  
section related to contracts for which the customer is enrolled or re-enrolled on or  
after September 1, 2021.

C. Changes to Strawman 25.475(b) and (c) – related to “fixed rate product” and “price” definitions and removal of provisions related to large commercial customers.

TEAM proposes rejecting the Strawman’s proposed additions to the definitions of “fixed rate product” and “price” in Strawman section 25.475(b)(5) and 25.475(b)(8). The Strawman proposes to include ancillary service charges in those definitions, but these additions are not necessary and would overcomplicate the rules. The existing definitions of “fixed rate product” and “price” have been in place for years and have worked. Making changes to these working definitions will only create confusion. Further, what constitutes ancillary services has been, and appears to continue to be, in flux at the Commission. Should ERCOT create a new category of cost or fee beyond the REPs’ control, the REPs should not be prohibited from passing that charge through simply because it was given a label as an ancillary service.<sup>2</sup> Thus, TEAM proposes that the Strawman’s proposed additions to the definitions of “fixed rate product” and “price” be rejected, and that the existing definitions, which are known to work, be maintained.

Second, TEAM also proposes elimination of the Strawman’s proposed additions of references to the Acknowledgment of Risk (“AOR”) document to the extent they would be applicable to residential and small commercial customers. The definition of AOR should be

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<sup>2</sup> Not only would the interjection of ancillary services into the existing definitions create unnecessary complication and confusion, but because that is such a government-malleable charge, it will result in takings from REPs. There cannot be a scenario where on one side of the equation the government can step in and create a new ancillary services charge, but on the other side of the equation says that REPs cannot pass that new charge through or recover it.

incorporated in the new rule section applicable only to large commercial customers. House Bill 16's language concerning AORs is cabined to large commercial customers with wholesale indexed products. Thus, TEAM also proposes changes to Strawman section 25.475(b), that maintain existing definitions and eliminate newly proposed references to the AOR, which should be housed in a separate rule pertaining to large commercial customers. TEAM's proposed changes to Strawman sections 25.475(b) and (c) relating to all of the issued outlined above are as follows.

**TEAM's proposed changes to Strawman 25.475(b):**

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|-----|--|
| (1) | <b>Contract</b> -- The Terms of Service document (TOS), the Electricity Facts Label (EFL), Your Rights as a Customer document (YRAC), <del>and</del> <u>and</u> the documentation of enrollment pursuant to §25.474 of this title (relating to Selection of Retail Electric Provider), <del>and, if applicable, the Acknowledgement of Risk (AOR).</del>   |
| (2) | <b>Contract documents</b> -- The TOS, EFL <del>and</del> <u>and</u> , YRAC, <del>and, if applicable, AOR.</del>  |
| (5) | <b>Fixed rate product</b> -- A retail electric product with a term of at least three months for which the price (including recurring charges <del>and ancillary service charges</del> ) for each billing period of the contract term is the same throughout the contract term, except that the price may vary from the disclosed amount solely to reflect actual changes in the Transmission and Distribution Utility (TDU) charges, changes to the Electric Reliability Council of Texas (ERCOT) or Texas Regional Entity administrative fees charged to loads or changes resulting from federal, state or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control. |



- (8) **Price** -- The cost for a retail electric product that includes all recurring charges, ~~including ancillary services,~~ excluding state and local sales taxes, and reimbursement for the state miscellaneous gross receipts tax.

**TEAM's proposed changes to Strawman 25.475(c):**

**(1) General Disclosure Requirements.**

- (A) All written, electronic, and oral communications, including advertising, websites, direct marketing materials, billing statements, TOSs, EFLs, ~~YRACs,~~ and ~~YRACsAORsYRACs~~ distributed by a REP or aggregator ~~must~~shall be clear and not misleading, fraudulent, unfair, deceptive, or anti-competitive. Prohibited communications include, but are not limited to: . . .
- (C) The TOS, EFL, ~~and~~and ~~YRAC,~~ ~~and, if applicable, AOR~~ ~~must~~shall be provided to each customer upon enrollment. Each document ~~must~~shall be provided to the customer whenever a change is made to the specific document and upon a customer's request, at any time free of charge.
- (D) A REP ~~must~~shall retain a copy of each version of the TOS, EFL, ~~and~~and ~~YRAC,~~ ~~and, if applicable, AOR~~ during the time the plan is in effect for a customer and for four years after the contract ceases to be in effect for any customer. REPs ~~must~~shall provide such documents at the request of the commission or its staff.

**(2) General contracting requirements.**

- (A) A TOS, EFL, ~~and~~and ~~YRAC,~~ ~~and~~and ~~AOR must~~ ~~YRAC~~ ~~shall~~ be complete, ~~shall~~ be written in language that is clear, plain and easily understood, and ~~and~~shall be

printed in paragraphs of no more than 250 words in a font no smaller than 10 point. References to laws including commission rules in these documents ~~must~~shall include a link or internet address to the full text of the law.

**(3) Specific contract requirements.**

(F) A REP, aggregator, or broker must not offer a wholesale indexed product to a residential or small commercial customer. ~~A REP, aggregator, or broker may enroll a customer other than a residential or small commercial customer in a wholesale indexed product only if the REP, aggregator, or broker obtains before the customer's enrollment an AOR in compliance with the requirements of this section.~~

~~(G) A REP, aggregator, or broker may enroll a customer, including a customer other than a residential or small commercial customer, in an indexed product or a product that contains a direct pass through of ancillary service charges only if the REP, aggregator, or broker obtains before the customer's enrollment and AOR in compliance with the requirements of this section.~~

**(4) Website requirements.**

(B) The EFL for each product ~~must~~shall be printable in no more than a two-page format. The EFL, TOS, ~~and~~ and YRAC, ~~and, if applicable, AOR~~ for any products offered for enrollment on the website ~~must~~shall be available for viewing or downloading.

D. Changes to Strawman 25.475(e)(2) – to conform expiration-notices requirement amendments to text and intent of the statutes and House Bill 16.

First, TEAM proposes revisions to the Strawman’s proposed additions in Strawman section 25.475(e) to make clear that the new fixed rate product expiration-notice requirements do not apply to small commercial customers. Texas Utilities Code Section 39.112, as amended by recently-enacted House Bill 16, only addresses residential customers. Thus, TEAM proposes that the Strawman be revised to better match the text and intent of House Bill 16 and the statute, and eliminate any implied extension to small commercial customers.

Second, there is one instance where Strawman section 25.475(e)(2)(D) uses an “and” where House Bill 16 uses an “or.” TEAM proposes replacing that “and” in Strawman section 25.475(e)(2)(D) with an “or” so that Strawman section 25.475(e)(2)(D) comports with and mirrors the language of House Bill 16, and does not deviate from its intended effect.

Third, TEAM proposes eliminating Strawman section 25.475(e)(2)(C). This portion of the rule is not necessary because REPs are free to communicate with their customers at all times. To add Strawman section 25.475(e)(2)(C) would add risk of confusion, because it could mistakenly be construed as somehow requiring Commission authorization for communication.

**TEAM’s proposed changes to Strawman 25.475(e)(2):**

**~~(1)~~(2) Notice Timeline for Expiration of a Fixed Rate Residential Product.**

(A) For residential customers with fixed rate products, the REP must provide the residential customer with at least three written notices of the date the fixed rate product will expire. The notices must be provided during the last third of the contract period and in intervals that allow for, as practicable, even distribution of the notices throughout the last third of the contract period. For contracts for a period:

- (i) Of more than four months, the final notice must be provided at least 30 days before the date the contract will expire.
- (ii) Of less than four months, the final notice must be provided at least 15 days before the date the contract will expire.
- (B) The notices must be provided to the residential customer by mail at the residential customer's billing address, unless the residential customer has opted to receive communications electronically from the REP.
- ~~(C)~~ Additional means of providing the customer notice may be utilized, so long as it is in addition to the notice required in paragraph (B) of this subsection.
- ~~(D)~~(C) If a REP does not provide the required notice of the expiration of a residential customer's contract and the residential customer does not select another retail electric product before expiration of the contract term, the REP must continue serving the residential customer under the terms of the fixed rate contract until sufficient expiration notice is provided and the residential customer selects another retail electric product.

E. Changes to Strawman 25.475(e)(1) – related to notice for other products.

TEAM proposes the following clarifying language to the new changes to Strawman section 25.755(e)(1), which refers to term contracts and incorporates the limitation that the new fixed rate product expiration notice requirements only apply to residential customers:

**TEAM's proposed changes to Strawman 25.475(e)(1):**

- (1) Notice Timeline for Expiration of a Term Contract Non-Fixed Rate Product.**

For a term contract, other than a contract with a residential customer for a fixed rate products, the REP must send a written notice of contract expiration at least 30 days or one billing cycle prior to the date of contract expiration, but no more than 60 days or two billing cycles in advance of contract expiration for a residential customer, and at least 14 days but no more than 60 days or two billing cycles in advance of contract expiration for a small commercial customer. The REP ~~must~~shall send the notice by mail to a residential customer or ~~may~~shall send the required notice to a customer's e-mail address if available to the REP and if the customer has requested to receive contract-related notices electronically. The REP ~~must~~shall send the notice to a small commercial customer by mail or may send the notice to the customer's email address if available to the REP and, if the customer has requested to receive contract-related notices electronically. Nothing in this section ~~precludes~~shall preclude a REP from offering a new contract to the customer at any other time during the contract term.

F. New Section 25.499 for the House Bill 16 requirements for large commercial customers.

TEAM proposes language for a new, separate rule section, 25.499, to house House Bill 16's changes relating to large commercial customers, which is set forth below.

**§25.499. General Retail Electric Provider Requirements and Information Disclosures to Customers Other Than Residential and Small Commercial Customers**

(a) **Applicability.** The requirements of this section apply to retail electric providers (REPs) in connection with the provision of service and marketing to customers other than residential or small commercial customers. When specifically stated, the requirements of this section apply to brokers and aggregators. This section is effective for enrollments or re-enrollments into contracts on or after September 1, 2021. REPs are not



required to modify contract documents related to contracts or enrollments entered into before this date.

(b) **Specific Contract Requirements for Wholesale Indexed Products.** A REP, aggregator, or broker may enroll a customer other than a residential or small commercial customer in a wholesale indexed product only if the REP, aggregator, or broker obtains before the customer's enrollment an Acknowledgment of Risk (AOR) in compliance with the requirements of this section.

(c) **Acknowledgement of Risk.**

(1) Before a customer's enrollment in a wholesale indexed product, an aggregator, broker, or REP must obtain an AOR, signed by the customer, verifying that the customer accepts the potential price risks associated with the product.

(2) The AOR must include the following statement in clear, boldfaced text:

"I understand that the volatility and fluctuation of wholesale energy pricing may cause my energy bill to be multiple times higher in a month in which wholesale energy prices are high. I understand that I will be responsible for charges caused by fluctuations in wholesale energy prices."

(3) An AOR may be included as an addendum to a contract.

(4) A REP that provides a wholesale indexed product to a customer must keep on file the AOR required by this section for each customer while the customer is enrolled with the REP in the wholesale indexed product.

G. Changes to Strawman 25.475(h)(3) – relating to TDU disclosures in YRAC.

TEAM acknowledges the requirement in SB 3 for REPs to disseminate to customers the information REPs receive from TDUs as set forth in the statute and supports the inclusion of this requirement in the Strawman proposed changes to 25.479. However, TEAM proposes eliminating the Strawman's proposal to require REPs to provide information related to TDU load-shedding procedures in the YRAC document that are set forth in Strawman section 25.475(h)(3). This type of information is not appropriate for inclusion in the YRAC. The information does not relate to any REP obligation, but to procedures, commitments, and obligations from TDUs that are out of the REP's control. Having such disclosures in the YRAC could create customer confusion, and

lead customers to falsely believe that REPs are in control of, for example, how often a customer will experience a rotating outage during involuntary load shedding. Accordingly, TEAM proposes the following revisions to the Strawman:

**TEAM's proposed changes to Strawman 25.475(h)(3):**

- (3) The YRAC document ~~must~~<sup>shall</sup> inform the customer of the REP's procedures for reporting outages and the steps necessary to have service restored or reconnected after an involuntary suspension or disconnection. ~~The YRAC must also provide information the REP has received from the transmission and distribution utility (TDU) pursuant to PURA §17.003(e) regarding the TDU's procedures for implementing involuntary load shedding initiated by the independent organization certified under PURA §39.151 for the ERCOT power region, and, if applicable, where any additional details regarding those procedures or relevant updates may be located.~~

- H. Changes to Strawman 25.475(j) – related to AORs for products other than wholesale indexed products, and conformance to proposal to eliminate large commercial customer references.

As set forth previously, House Bill 16's language concerning the Acknowledgment of Risk ("AOR") is specific to wholesale indexed products, which are limited to large commercial customers. The Strawman's proposed additions of AOR requirements for other products exceed the intent and text of House Bill 16. Thus, TEAM proposes that any rules pertaining to the AOR be limited to House Bill 16's text and intent – i.e., specific to wholesale indexed products for large commercial customers. Further, TEAM proposes that, because the AOR is limited to large commercial customers, that any provisions relating to the AOR be housed in a separate rule

pertaining to large commercial customers alone, rather than placed into section 25.475, which pertains to residential and small commercial customers only. Accordingly, TEAM proposes the elimination of Strawman section 25.475(j), with subsection (j)(1) to be revised and housed in a separate rule (see section F of these comments for proposed language for a new section 25.449), and subsections (j)(2)-(3) to be eliminated entirely.

**TEAM's proposed changes to Strawman 25.475(j):**

~~(j) — Acknowledgement of Risk. Before a customer's enrollment in an indexed product, a wholesale indexed product, or a product that contains a direct pass-through of ancillary service charges, an aggregator, broker, or retail electric provider must obtain an AOR, signed by the customer, verifying that the customer accepts the potential price risks associated with the product.~~

~~—— (1) For Wholesale Indexed Products, the AOR must include the following statement in clear, boldfaced text: "I understand that . . . ."~~

~~—— (2) For Indexed Products . . . .~~

~~—— (3) For products that contain a direct pass-through. . . .~~

I. Additional comments on the expiration notices for residential customers with fixed rate products.

TEAM proposes that, concerning the even distribution of expiration notices required by House Bill 16, the Strawman be revised to allow the REP flexibility to implement those notices on a timeframe that accomplishes an even distribution by number of days from contract expiration, rather than just referring to divisions of a contract's period. Stated another way, the REP should be permitted to determine the timing of when the three notices of contract expiration should start, provided all such notices are sent within the last third of the contract period and at reasonably even



distribution, with the last notice being sent within the 30- or 15-day prior to contract end date, depending on the contract's term, required by HB 16. For example, if a customer has a three-year contract, they are likely not interested in contract expiration an entire year before their contract expires, and a first expiration notice provided that far out from actual expiration would be less effective at providing information to customers *when they need it*. In contrast, a first expiration notice sent 90-days before expiration would likely come at a time when it makes sense from the customer's perspective, and at a time when the customer is more likely to pay attention to it, consider it, and act on it. While the statute does say that the notices should be evenly dispersed in the last third of the contract, it also says, where practicable.

Second, currently, the proposed Strawman sets forth two categories for notice: (1) notice for customers with contracts longer than 4 months, and (2) notice for customers with contracts less than 4 months. However, it is unclear which categories applies to customers with contracts that are exactly 4 months. TEAM suggests that the Strawman be revised as to one of the notice categories, to make clear which category customers with 4-month-long contracts fall into.

J. Proposed changes to Strawman 25.479.

As referenced above, TEAM proposes that the requirements regarding distribution of TDU information be limited to the newly proposed notice as set forth in Strawman sections 25.479(d)(1)(A)-(D). TEAM notes that it is important to ensure that electronic communication is allowed for these notices (subject to the customers' preference), so that customers may be most effectively and timely reached.

K. Other items related to the Strawman.

TEAM notes that there are several instances in the Strawman where the term "customer" is used, although the term that is likely more appropriate is "applicant." The necessary

replacements and clean-up changes relating to these terms can be made at a later stage in the process of developing these proposed rule amendments.

### III. COMMENTS ON POLR QUESTIONS

Staff requested comments on the following questions related to removal of the RTSPP from the POLR rate formulas:

1. If the Commission removes the RTSPP from the POLR rate formulas, what would be an equitable approach to POLR pricing moving forward?

In response to Staff's Question No. (1), TEAM proposes that if the Commission removes the RTSPP from the POLR rate formulas, that the RTSPP variable be replaced with a variable that is tied to a multiplier of an average objective rate that does not have the volatility of a RTSPP. For example, the new substituted variable could be defined as a "market-based rate not to exceed 5 times the prior year's average RTSPP for the applicable month." Another potential substitution for the RTSPP variable could be a multiplier of the forward market index during a time period preceding the POLR market. At this time, TEAM is not proposing concrete language for the substituted variable, but is suggesting these ideas as a starting point for discussions.

2. What other considerations should the Commission take into account in determining whether and how to remove RTSPP from the POLR rate formulas (e.g. the role the POLR rate plays in §25.498, related to prepaid service, etc.)?

In response to Staff's Question No. (2), TEAM strongly urges that if the RTSPP is removed from the POLR rate formulas, there must be some back-stop and/or recovery mechanism, where REPs who get POLR drops have limited exposure and/or can recover through uplift or pass through the difference between what they had to pay to serve these unexpected customers, which are likely dropping when RTSPP is high, and what the POLR rate allows. REPs who happen to get POLR drops should not unequally bear costs of the whole market. This is especially true when it comes to POLR drops, which are unpredictable and difficult, or even, impossible to hedge. This is even

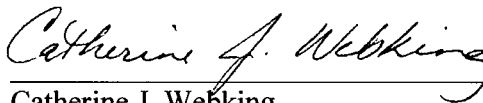
more true of POLR drops caused by unforeseen or catastrophic underlying market events, for which REPs cannot hedge. Concerns about market spiral scenarios arise if REPs are unable to recover the difference between what they paid and what the POLR rate allows.

TEAM also comments that the current POLR formula that includes the RTSPP variable could be maintained for large commercial customers. It is important to keep in mind that the POLR rate is not supposed to be a long-term rate for customers.

### **CONCLUSION**

TEAM appreciates the opportunity to work with the Commission and all market participants on the proposed Strawman in furtherance of implementing the statutory language adopted by the legislature.

Respectfully submitted,



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